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**(2018) 07 BOM CK 0133**

**In the Bombay High Court**

**Case No :** Criminal Application No.3474 of 2013

Vishal Rajkumar Agrawal

APPELLANT

Vs

State Of Maharashtra And Another

RESPONDENT

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**Date of Decision :** 31-07-2018

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 482

Prevention of Food Adulteration Act 1954 — Section 2(a), 2(ia), 2(ia)(m), 7(i), 16, 97, 97(4), 98, 99

General Clauses Act, 1897 — Section 6

**Citation :** (2018) 07 BOM CK 0133

**Hon'ble Judges :** T.V. NALAWADE, J;K.L. WADANE, J

**Bench :** Division Bench

**Advocate :** R.M. Deshmukh, R.V. Dasalkar,

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## **Judgement**

T.V. Nalawade, J

(1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of proceeding of R.C.C.No.345/2009 which

is pending in the Court of Judicial Magistrate, First Class Amalner, District Jalgaon and which is filed for offences under section 7(i) read with section

2(ia),(a), 2(ia)(m) of the Prevention of Food Adulteration Act 1954 punishable under section 16 of the Prevention of Food Adulteration Act 1954 and

the Rules made there under. Both the sides are heard.

(2) The private complaint is filed by public servant, Food Inspector of Maharashtra State. The case is of adulteration of buffalo milk. The present

proceeding is filed to challenge the said criminal case and the contention made is that prior to the date of purchase of aforesaid milk and the date of

the complaint, the new Act, ""The Food Safety and Standards Act, 2006"" had come into force. It is the contention that the provisions of the old Act

could not have been used against the applicant, the proprietor of the concern from where the milk was purchased by the Food Inspector.

(3) Learned counsel for the applicant placed reliance on provisions of section 97 of the new Act and also other sections like section 98 and 99 of the new Act.

These provisions run as under :

97. Repeal and savings.-- (1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed;

Provided that such repeal shall not affect:--

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provision of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and orders, the licenses issued under any such enactment or order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no Court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act.

98. Transitory provisions for food standards.-- Notwithstanding the repeal of the enactment and orders specified in the Second Schedule the standards,

safety requirements and other provisions of the Act and the rules and regulations made thereunder and orders listed in that Schedule shall continue to

be in force and operate till new standards are specified under this Act or rules and regulations made thereunder:

Provided that anything done or any action taken under the enactment and orders under repeal shall be deemed to have been done or taken under the

corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken under

this Act.

99. Milk and Milk Products Order, 1992 shall be deemed to be regulations made under this Act:-- (1) On and from the date of commencement of this

Act, the Milk and Milk Products Order, 1992 issued under the Essential Commodities Act, 1955 (10 of 1955) shall be deemed to be the Milk and Milk

Products Regulations, 1992 issued by the Food Authority under this Act.

(2) The Food Authority may, with the previous approval of the Central Government and after previous publication, by notification, amend the

regulations specified in sub-section (1) to carry out the purposes of this Act.

4) Reading of the provisions of sections 97 to 99 and the Second Schedule of the Act shows that Milk and Milk Products Order which is mentioned in

the reply affidavit by the State and on the basis of which argument was advanced came to be treated as Regulations made under new Act in view of

provision of section 99. The combined reading of these sections further shows that the provisions of the new Act including the Regulations like Milk

and Milk Products Order were to remain in force till the provisions were expressly repealed by notification by the Central Government. The aforesaid

provisions and the Second Schedule show that the operation and use of the Milk and Milk Products Order was protected after making it as the

Regulations under the new Act and the provisions of this Order could have been used till the date of notification which could have been issued by the

Central Government as provided under section 97 of the new Act.

Copy of Notification dated 4-8-2011 of the Ministry of Health and Family Welfare, Central Government, shows that with effect from 5-8-2011 Milk

and Milk Products Order 1992 came to be repealed. Not only this Order but also

the Prevention of Food Adulteration Act, 1954 came to be repealed in entirety due to this notification. Thus, the old Act came to be repealed with effect from 5-8-2011. 5) Learned Additional Public Prosecutor argued much for using the Milk and Milk Products Order 1992. In fact the provision of section 99 which is in respect of the Milk and Milk Products Order 1992 was brought in force on 29-6-2009 for the new Act. On the date of the collection of milk i.e. 11-6-2009 there was no notification to give effect to the provision of section 99 of the new Act as the notification came to be issued after collection of the milk.

(6) The provisions of the new Act are to aforesaid effect and they provide for the transitory provisions. These provisions and the Rules of 1955 framed under the old Act, and particularly rule 42.A.11.1.11 show that these rules were in operation on the date of collection of the milk by the Food Inspector. On the date of the complaint viz. on 31-12-2009 also provisions of old Act were applicable as relevant notification came to be issued to repeal old Act on 4-8-2011. It is not disputed that standards prescribed in the old Act are to apply till they are specifically repealed as provided by the new Act.

(7) If we carefully go through the purpose behind the Milk and Milk Products Order 1992 we can definitely say that the purpose behind that Order was totally different. That is why initially this Order was made the Regulations under new Act but subsequently the State realised that the Milk and Milk Products Order need not to remain as part of the new Act and so by notification dated 4-8-2011, the Order was removed from the new Act. To take care of the present matter, there was already the rule in the old Act quoted above. This Court has no hesitation to hold that the Milk and Milk Products Order 1992 has no relevance to the present matter and the aforesaid provisions of the old Act 1954 are sufficient to cover the present offences.

(8) At the cost of repetition this Court is mentioning that the milk was collected by the Food Inspector on 11-6-2009 and the complaint came to be filed on 31-12-2009 under the provisions of the old Act. Though in section 97(4) of the new Act period is fixed as three years for taking cognizance of the offences which were committed under old Act and the new Act came into force from 24-8-2006, the Court cannot ignore the transitory provisions like

provision of section 98 of the new Act. If this provision is read with other provisions of section 97 of the new Act, which required issuance of specific

notification to repeal a particular provision which was applicable in the past and which also provided for continuing the liability incurred under the old

Act till the provision is made in the new Act, this Court holds that provision of section 97(4) of the new Act prescribing the period of limitation cannot

help the applicant. As the standards are not yet changed and for the offences which were committed under the old Act there was specific provision in

existence and as provision of sections 50 and 51 of the new Act can also be used as provided in transitory provisions of section 98 of the new Act, it is

not possible to quash the proceeding.

(9) Learned counsel for the applicant placed reliance on the following four cases reported as :

(i) 2016(5) ALL MR 632 (M/s Pemod Ricard India P.Â Ltd. v. Union of India);

(ii) 1994 Supp(1) SCC 44 (K. Narayanan v. State of Karnataka);

(iii) LEX (MPH) 2016 5 85 (Manik Hiru Jhangiani v. State of M.P.); and,

(iv) LEX (ALL) 2011 2 45 (Prem Nath v. State of U.P.)

The last case and the second case are totally on different point and they are not relevant to the present matter. In the first case decided by Bombay

High Court, the facts were totally different and the point involved was also different. There is no ratio as such for the present matter in the case

decided by Bombay High Court. The point involved in the present matter is already quoted. No other points were argued by the learned counsel for

the applicant. This Court holds that there is no force in the grounds raised by the applicant and the proceeding cannot be quashed. In the result, the

application stands dismissed. Rule is discharged. Interim relief is vacated.